

ESTTA Tracking number: **ESTTA665212**

Filing date: **04/06/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	77508141
Applicant	Summit Entertainment, LLC
Applied for Mark	TWILIGHT
Correspondence Address	JILL M PIETRINI SHEPPARD MULLIN RICHTER & HAMPTON LLP 1901 AVENUE OF THE STARS, SUITE 1600 LOS ANGELES, CA 90067 UNITED STATES mdanner@sheppardmullin.com, TrademarksCC@sheppardmullin.com
Submission	Request for Dismissal of Ex Parte Appeal as Moot and Remand to Examining Attorney
Attachments	TWILIGHT Class 3 - Request for Dismissal as Moot.pdf(396957 bytes)
Filer's Name	Jill M. Pietrini
Filer's e-mail	jpietrini@smrh.com, mdanner@smrh.com, rwalsh@smrh.com, LMARTIN@SMRH.COM
Signature	/Jill M. Pietrini/
Date	04/06/2015

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re Application of:

Summit Entertainment , LLC

Serial No: 77/508,141

Filed: June 25, 2008

Class: 3

Mark: TWILIGHT

Examining Attorney

C. Skye Young

Law Office: 117

**REQUEST FOR DISMISSAL OF
EX PARTE APPEAL AS MOOT
AND REMAND TO EXAMINING
ATTORNEY**

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Commissioner:

Applicant Summit Entertainment, LLC (“Applicant”) hereby requests that the Trademark Trial and Appeal Board (“the Board”) dismiss the appeal as moot, TBMP § 1212, and remand the application to the Examining Attorney to issue a notice of publication, TBMP § 1212. Applicant has good cause for its request.

REMARKS

I. The Cited Registrations Have Been Assigned to Applicant

Section 1212 of the TBMP states, “[i]f, during the pendency of an ex parte appeal involving a refusal to register under Trademark Act § 2(d), 15 U.S.C. § 1052(d), the cited registration is cancelled, or is assigned to the applicant, the appeal will be moot insofar as that issue is concerned. If the refusal to register on the basis of the cancelled or assigned registration is the only issue involved in the appeal, the Board will dismiss the appeal as moot, and the

application will be sent to the examining attorney for approval for publication (or for registration, in the case of a Supplemental Register application).” *Id.*

The Examining Attorney’s sole basis for refusing registration of Applicant’s mark is under Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d), based on likelihood of confusion with U.S. Reg. No. 3,592,437 for the mark TWILIGHT and U.S. Reg. No. 3,635,636 (International Reg. No. 0989711) for the mark TWILIGHT (the “Cited Registrations”), both owned by Bath & Body Works Brand Management, Inc. (“Assignor”). The Cited Registrations were assigned by Assignor to Applicant on September 30, 2014. The appeal pending before the Board should be dismissed because the sole bar to registration has been rendered moot.

Recordation of the assignment for U.S. Reg. No. 3,592,437 was recorded in the Assignment Division of the PTO on October 30, 2014 at Reel 5390 frame 0807. Attached hereto as **Exhibit A** is a true and correct status printout from the Assignment Division database, trademark assignment stamped cover sheet and trademark assignment agreement.

Recordation of the assignment for U.S. Reg. No. 3,635,636 (International Reg. No. 0989711) is currently pending before the International Bureau of the World Intellectual Property Organization (“WIPO”) because that registration is based on Section 66(a) of the Lanham Act, 15 U.S.C. 1141(f)(a) and must be filed with WIPO. *See* TMEP §501.07 and §1906.01. Attached hereto as **Exhibit B** is a true and correct copy of the request for recordal of assignment of U.S. Reg. No. 3,635,636 (International Reg. No. 0989711) sent to WIPO on December 19, 2014. Attached hereto as **Exhibit C** is a true and correct copy of the response sent by WIPO on December 22, 2014 confirming receipt of the request and stating that the request “will be processed as soon as possible.” The recordation request is still pending. Applicant is timely filing this request before Applicant’s deadline to file its appeal brief on April 6, 2015.

II. Conclusion

For these reasons, Applicant respectfully requests that the Board dismiss the appeal as moot and remand the application to the Examining Attorney for issuance of a notice of publication. In the alternative, Applicant requests that the Board suspend the present appeal pending recordation of the assignment of U.S. Reg. No. 3,635,636 (International Reg. No. 0989711) by WIPO.

Respectfully submitted,

Dated: April 6, 2015

/Jill M. Pietrini/

Jill M. Pietrini
SHEPPARD MULLIN RICHTER & HAMPTON LLP
1901 Avenue of the Stars, Suite 1600
Los Angeles, California 90067-6017
(310) 228-3700

CERTIFICATE OF ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being transmitted electronically to Commissioner of Trademarks, Attn: Trademark Trial and Appeal Board through ESTTA pursuant to 37 C.F.R. §2.195(a), on this 6th day of April, 2015.

/LaTrina Martin/

LaTrina Martin

SMRH:436848470.1

EXHIBIT A



United States Patent and Trademark Office

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Trademark Assignment Details

Reel/Frame: [5390/0807](#)[View Recorded Assignment](#)

Pages: 2

Recorded: 10/30/2014

Attorney Dkt #: 22HF-165423

Conveyance: ASSIGNS THE ENTIRE INTEREST

Total properties: 1

1 Serial #: [77329379](#) Filing Dt: 11/14/2007 Reg #: [3592437](#) Reg. Dt: 03/17/2009
Mark: TWILIGHT

Assignor

1 [BATH & BODY WORKS BRAND MANAGEMENT, INC.](#)

Exec Dt: 09/30/2014

Entity Type: CORPORATION

Citizenship: DELAWARE

Assignee

1 [SUMMIT ENTERTAINMENT, LLC](#)
2700 COLORADO AVE., 2ND FLOOR
SANTA MONICA, CALIFORNIA 90404

Entity Type: LIMITED LIABILITY
COMPANY

Citizenship: DELAWARE

Correspondence name and address

JILL M. PIETRINI
1901 AVENUE OF THE STARS, SUITE 1600
LOS ANGELES, CA 90067

Search Results as of: 03/31/2015 09:51 PM

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.5
Web interface last modified: July 25, 2014 v.2.5

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TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM321629

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Bath & Body Works Brand Management, Inc.		09/30/2014	CORPORATION: DELAWARE

RECEIVING PARTY DATA

Name:	Summit Entertainment, LLC
Street Address:	2700 Colorado Ave., 2nd Floor
City:	Santa Monica
State/Country:	CALIFORNIA
Postal Code:	90404
Entity Type:	LIMITED LIABILITY COMPANY: DELAWARE

PROPERTY NUMBERS Total: 1

Property Type	Number	Word Mark
Registration Number:	3592437	TWILIGHT

CORRESPONDENCE DATA

Fax Number: 3102283953
Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.
Phone: 310.228.3700
Email: rwalsh@smrh.com
Correspondent Name: Jill M. Pietrini
Address Line 1: 1901 Avenue of the Stars, Suite 1600
Address Line 4: Los Angeles, CALIFORNIA 90067

ATTORNEY DOCKET NUMBER:	22HF-165423
NAME OF SUBMITTER:	Jill M. Pietrini, Esq.
SIGNATURE:	//jmp//
DATE SIGNED:	10/30/2014

Total Attachments: 1

source=TM Assignment to Summit Entertainment, LLC - TWILIGHT, Cl. 3#page1.tif

TRADEMARK

Trademark Assignment Agreement

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Bath & Body Works Brand Management, Inc. ("Assignor" or "BBW") hereby irrevocably assigns, grants, and delivers to Summit Entertainment, LLC ("Assignee") and its successors and assigns, throughout the world, in perpetuity, all of its rights, titles, and interests of every kind and nature whatsoever in the trademarks identified below, together with the goodwill of the business symbolized by such trademarks and the registrations for such trademarks and any and all claims, demands, and causes of action for infringement or dilution of the Mark, past, present and future, and all the proceeds from the foregoing.

Mark	Registration No.	Owner
TWILIGHT	3,635,636	BBW
TWILIGHT	3,592,437	BBW

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date of full execution of this Agreement by both parties as indicated below.

Bath & Body Works Brand Management, Inc.

Summit Entertainment, LLC

By: [Signature]

By: [Signature]

Name: JOSEPH QUIGLEY

Name: David C. Friedman

Title: VICE PRESIDENT

Title: EVP & General Counsel

Date: 30 September 2014

Date: 9/30/14

TRADEMARK

EXHIBIT B

Robert Walsh

From: Adelle Jones
Sent: Friday, December 19, 2014 12:20 PM
To: intreg.mail@wipo.int
Cc: Jill Pietrini; Jayne Lubensky; Ryan Hudson; TrademarksCC
Subject: Form MM5(E) :: Request for the Recording of a Change in Ownership
Attachments: DOC009.PDF

Importance: High

Re: Form MM5(E) : Request for the Recording of a Change in Ownership for International Registration
Nos. 989711 and 1007506

Dear Sirs,

Please see the attached Form MM5(E) for recordation of a change in ownership for the above-captioned International Registrations.

Kindly confirm receipt of the attached and advise if you require the original document or anything further. Thank you,

Adelle Jones
IP Specialist
310.228.2243 | direct
310.228.3915 | direct fax
AJones@sheppardmullin.com

SheppardMullin

Sheppard Mullin Richter & Hampton LLP
1901 Avenue of the Stars, Suite 1600
Los Angeles, CA 90067-6017
310.228.3700 | main
www.sheppardmullin.com

MADRID AGREEMENT AND PROTOCOL CONCERNING THE
INTERNATIONAL REGISTRATION OF MARKS

REQUEST FOR THE RECORDING OF A CHANGE IN OWNERSHIP

(Rule 25 of the Common Regulations)

IMPORTANT

1. This request may be presented to the International Bureau directly by the holder (or his recorded representative), through the Office of the Contracting Party of the (recorded) holder or through the Office of the Contracting Party of the new owner (transferee).
2. If the present request relates to a **total** change in ownership, as provided for in item 6(a), this form may be used for **several** international registrations in the name of the same holder.
3. If the present request relates to a **partial** change in ownership, as provided for in item 6(b), this form may only be used to request the recording of a change in ownership for a **single** international registration.

World Intellectual Property Organization
34, chemin des Colombettes
1211 Geneva 20, Switzerland
Tel. (Madrid Customer Service): +41 (0)22 338 8686
Fax (Madrid Registry): +41 (0)22 740 1429
e-mail: intreg.mail@wipo.int – Internet: www.wipo.int

REQUEST FOR THE RECORDING OF A CHANGE IN OWNERSHIP

<p style="text-align: center;"><u>For the holder (transferor)/new owner (transferee)</u></p> <p>This request contains the following number of continuation sheets:</p> <p>.....</p> <p>Holder/new owner's reference: <u>22HF-165423</u>.....</p>	<p style="text-align: center;"><u>For the Office</u></p> <p>Office's reference:</p>
--	---

1 INTERNATIONAL REGISTRATION NUMBER(S)
(several international registrations may be indicated below, provided that all registrations concerned are the subject of a **total** change in ownership, as provided for in item 6(a))

989711..... 1007506.....

2 NAME OF THE HOLDER (TRANSFEROR)
(as recorded in the International Register)

Bath & Body Works Brand Management, Inc......

3 NEW OWNER (TRANSFeree)

(a) Name: Summit Entertainment, LLC.....

(b) Address: 2700 Colorado Avenue, Suite 200.....
Santa Monica, California 90404 U.S.A......

(c) Address for correspondence: Jill M. Pietrini, Esq., Sheppard Mullin Richter & Hampton, LLP.....
1901 Avenue of the Stars, Suite 1600, Los Angeles, California 90067 U.S.A......

(d) Telephone: (310) 228-3700..... Fax: (310) 228-3701.....

E-mail address:

By providing an e-mail address, any further correspondence from the International Bureau related to this/these international registration(s) will be sent only electronically and, **therefore, you will no longer receive any paper correspondence.** Likewise, any further correspondence from the International Bureau related to other international applications or international registrations for which the same e-mail address has been, or will be, provided will also be sent only electronically. Please note that, for the purpose of electronic communication, there can be only one e-mail address recorded per each international registration.

4**ENTITLEMENT OF THE NEW OWNER (TRANSFEREE) TO BE THE HOLDER OF THE INTERNATIONAL REGISTRATION**

(a) Indicate in the appropriate space(s):

(i) the name of the Contracting State of which the new owner (transferee) is a national; and/or,

(ii) the name of the State member of a Contracting Organization of which the new owner (transferee) is a national; and/or,

(iii) the name of the Contracting Party in the territory of which the new owner (transferee) is domiciled; and/or,

(iv) the name of the Contracting Party in the territory of which the new owner (transferee) has a real and effective industrial or commercial establishment:

United States

(b) Where the new owner (transferee) is not a national of a Contracting State or of a State member of a Contracting Organization and the address given in item 3(b) is not in the territory of any of the Contracting Parties mentioned in paragraph (a)(iii) or (iv) of the present item, indicate in the space provided below:

(i) the address of the new owner (transferee) in the territory of the Contracting Party mentioned in paragraph (a)(iii) of the present item; or,

(ii) the address of the new owner's (transferee) industrial or commercial establishment in the territory of the Contracting Party mentioned in paragraph (a)(iv) of the present item.

5**APPOINTMENT OF A REPRESENTATIVE BY THE NEW OWNER (TRANSFEREE)¹**

Name: Jill M. Pietrini, Esq., Sheppard, Mullin, Richter & Hampton, LLP

Address: 1901 Avenue of the Stars, Suite 1600

Los Angeles, California 90067 U.S.A.

Telephone: (310) 228-3700

Fax: (310) 228-3701

E-mail address:

By providing an e-mail address, any further correspondence from the International Bureau related to this/these international registration(s) will be sent only electronically and, therefore, you will no longer receive any paper correspondence. Likewise, any further correspondence from the International Bureau related to other international applications or international registrations for which the same e-mail address has been, or will be, provided will also be sent only electronically. Please note that, for the purpose of electronic communication, there can be only one e-mail address recorded per each international registration.

SIGNATURE OF THE NEW OWNER (TRANSFEREE) APPOINTING THE ABOVE REPRESENTATIVE (compulsory)

x



David C. Friedman, Esq.

¹ This item should be used where the new owner (transferee) wishes to appoint a representative. Note that, if the person recorded as the representative of the holder (transferor) is to be recorded as the representative of the new owner (transferee), such appointment should be made by completing this item.

6**SCOPE OF THE CHANGE IN OWNERSHIP (check either (a) or (b))**

(a) ☒ **TOTAL CHANGE IN OWNERSHIP** (the change in ownership is to be recorded for all the Contracting Parties designated in the international registration(s) indicated in item 1, and for all the goods and services covered by such international registration(s));

(b) ☐ **PARTIAL CHANGE IN OWNERSHIP** (read note No. 3 on the cover page before checking this box)

(i) the change in ownership is to be recorded for the designated Contracting Parties indicated below (if no Contracting Party is indicated, it will be understood that the change in ownership is to be recorded in respect of all the designated Contracting Parties); and/or,

.....

(ii) the change in ownership is to be recorded for the goods and services indicated below (grouped in the appropriate classes); if no goods and services are indicated, it will be understood that the change in ownership is to be recorded in respect of all goods and services.

You can find indications that are pre-accepted by the International Bureau in the Madrid Goods & Services Manager (MGS) at www.wipo.int/mgs/.

Please use font "Courier New" or "Times New Roman", size 12 pt, or above.

Please make consistent use of a semicolon (;) to clearly specify the goods and services indications in your list, e.g.:
 09 Scientific, optical and electronic apparatus and instruments; screens for photoengraving; computers.
 35 Advertising; compilation of statistics; commercial information agencies.

.....

☐ If the space provided above is not sufficient, check the box and use a continuation sheet

7**MISCELLANEOUS INDICATIONS**

(a) Indications concerning the new owner (transferee) (as may be required by certain designated Contracting Parties):

(i) if the new owner (transferee) is a natural person, indicate the nationality:

(ii) if the new owner (transferee) is a legal entity:

- legal nature of the legal entity: limited liability company.....
- State and, where applicable, territorial unit within that State, under the law of which the legal entity is organized:
Delaware.....

(b) The new owner (transferee) may choose a preferred language for correspondence:

☒ English ☐ French ☐ Spanish

8**SIGNATURE BY THE HOLDER (TRANSFEROR) AND/OR HIS REPRESENTATIVE**

Holder (transferor)
 (as recorded in the International Register)

Representative of the holder (transferor)
 (as recorded in the International Register)

Name: Bath & Body Works Brand Management, Inc......

Name:

Signature: 

Signature:

9

OFFICE OF THE CONTRACTING PARTY (OF THE RECORDED HOLDER (TRANSFEROR) OR THAT OF THE NEW OWNER (TRANSFeree)) PRESENTING THE REQUEST (where the request is presented through an Office)

Name of the Office:

.....

Name and signature of the official signing on behalf of the Office:

.....

FEE CALCULATION SHEET

(a) INSTRUCTIONS TO DEBIT FROM A CURRENT ACCOUNT

☒ The International Bureau is hereby instructed to debit the required amount of fees from a current account opened with the International Bureau (if this box is checked, it is not necessary to complete (b)).

Holder of the account: Sheppard, Mullin, Richter & Hampton, LLP Account number: 54209

Identity of the party giving the instructions: Adelle Jones

(b) AMOUNT OF FEES

Amount (177 Swiss francs) x 2 (per international registration mentioned in item 1) **Grand total (Swiss francs)** 354 CHF

(c) METHOD OF PAYMENT

Identity of the party effecting the payment:

Payment received and acknowledged by WIPO

☐

WIPO receipt number

Payment made to WIPO bank account
IBAN No. CH51 0483 5048 7080 8100 0
Crédit Suisse, CH-1211 Geneva 70
Swift/BIC: CRESCHZZ80A

☐

Payment identification

dd/mm/yyyy

Payment made to WIPO postal account
(within Europe only)
IBAN No. CH03 0900 0000 1200 5000 8
Swift/BIC: POFICHBE

☐

Payment identification

dd/mm/yyyy

EXHIBIT C

Robert Walsh

From: Mail, Intreg <intreg.mail@wipo.int>
Sent: Monday, December 22, 2014 2:10 AM
To: Adelle Jones
Subject: RE: Form MM5(E) :: Request for the Recording of a Change in Ownership

Thank you for contacting the Madrid and Hague Registries.
Your request will be processed as soon as possible.

Merci d'avoir contacté le Service d'enregistrement des Marques et des Dessins et Modèles.
Votre demande sera traitée dans les plus brefs délais.

Gracias por haber contactado con el Registro de Madrid y La Haya.
Su solicitud será procesada a la mayor brevedad.

Re: Form MM5(E) : Request for the Recording of a Change in Ownership for International Registration
Nos. 989711 and 1007506

Dear Sirs,

Please see the attached Form MM5(E) for recordation of a change in ownership for the above-captioned International Registrations.

Kindly confirm receipt of the attached and advise if you require the original document or anything further. Thank you,

Adelle Jones
IP Specialist
310.228.2243 | direct
310.228.3915 | direct fax
AJones@sheppardmullin.com

SheppardMullin

Sheppard Mullin Richter & Hampton LLP
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Los Angeles, CA 90067-6017
310.228.3700 | main
www.sheppardmullin.com

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